Teamsters Local Union No. 455 (Cargill Meat Solutions Corporation) *and* Said Ali. Case 27–CB–168294

October 4, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that the Respondent, Teamsters Local Union No. 455, has failed to file a timely answer to the complaint. Upon a charge filed by Said Ali on January 25, 2016,[1] and amended on April 28, the General Counsel issued a complaint and notice of hearing on May 24, alleging that the Respondent had violated Section 8(b)(1)(A) of the National Labor Relations Act. Although properly served copies of the charge and the complaint, the Respondent failed to file an answer.

By letter dated June 8, the Board's Region 27 informed the Respondent that it had not received the Respondent's answer to the complaint, which had been due on June 7. That letter warned that unless the Respondent filed its answer with the Regional Director by June 22, the Region would seek summary judgment and all complaint allegations would be deemed admitted. The Respondent did not file an answer by the June 22 deadline. On June 23, the General Counsel filed with the Board a Motion to Transfer Proceeding to the Board and Motion for Default Judgment, with exhibits attached; on the same date, the Respondent filed an answer to the complaint. On June 24, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On July 8, the Respondent filed a Response to the Notice to Show Cause and opposition to the General Counsel's Motion to Transfer the Proceeding to the Board and Motion for Default Judgment, and the General Counsel filed a brief in support of his Motion to Transfer the Proceeding to the Board and Motion for Default Judgment.

On the entire record, the National Labor Relations Board makes the following

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from the service of the complaint, unless good cause is shown. The complaint in this case affirmatively states that an answer "must be received by [Region 27] on or before June 7" and that if no answer is filed, or an answer is filed untimely, "the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true." In addition, the General Counsel's motion asserts (and the Respondent's opposition acknowledges) that, by letter dated June 8, Region 27 advised the Respondent that unless it received an answer by June 22, it would file a motion for "summary" judgment, which we construe as a motion for default judgment.

Despite receiving the complaint and the Region's warning letter, the Respondent neither filed an answer nor requested an extension of time to do so before the June 22 deadline expired. Instead, it filed an answer on June 23, the same day that the General Counsel filed the Motion for Default Judgment. The Respondent also filed an opposition to the Motion for Default Judgment, in which it contends that the failure to timely file an answer was the result of inadvertent oversight by legal counsel and "administrative errors." The Respondent argues that the Board has the discretion to deny the General Counsel's Motion and that failing to do so will result in prejudice because a hearing is necessary to address genuine issues of fact that have been raised in its response to the Board's Notice to Show Cause and its untimely answer.

We find the Respondent's arguments unavailing. The Respondent did not file an answer to the complaint by either the June 7 or 22 deadline. Nor did it request an extension of time to file an answer. Such failure to promptly request an extension of time is a factor demonstrating lack of good cause. See, e.g., *V. Garofalo Carting*, 362 NLRB No. 170, slip op. at 1 (2015); *A.C.E. Construction, Inc.*, 340 NLRB 609, 610 (2003); *CAC Services*, *Inc.,* 338 NLRB 993, 993 (2003); *Associated Supermarket*, 338 NLRB 780, 781 (2003).

On June 23, when the Respondent filed an untimely answer, it did not comply with the express instructions for doing so in Section 102.111(c) of the Board's Rules and Regulations. That is, it did not file "a motion that states the grounds relied on for requesting permission to file untimely," accompanied by an affidavit containing the facts relied on to support the motion. In *Elevator Constructors Local 2 (Unitec Elevator Services Co.)*, 337 NLRB 426, 428 (2002), the Board announced that in cases under the excusable-neglect provision of Section 102.111(c) of the Board's Rules and Regulations, the Board would "strictly adhere to our rule that the specific facts relied on to support the motion to accept a late filing shall be set forth in affidavit form and sworn to by

[1] All dates are in 2016 unless otherwise stated.

individuals with personal knowledge of the facts." Because the Respondent did not comply with the requirements of Section 102.111(c) of the Board's Rules and Regulations, its untimely answer was improperly filed.

Moreover, the unsworn assertions that the Respondent has provided in its opposition do not demonstrate good cause for its failure to file a timely answer. First, counsel for the Respondent avers that "the date for the filing of an Answer was overlooked" due "entirely [to] an oversight by legal counsel" and should not be attributed to the Respondent itself. The Board has consistently held that counsel inattention is not sufficient to establish good cause. See, e.g., *King Courier*, 344 NLRB 485, 485 (2005); *South Atlantic Trucking*, 327 NLRB 534, 534–535 (1999); *Sherwood Coal Co.*, 252 NLRB 497, 497 (1980). Similarly, the Respondent's explanation for its failure to file a timely answer in response to the Region's June 8 warning letter—that the letter was "apparently placed directly into the case file, thus unintentionally bypassing" its legal proceedings "suspense system"—does not establish good cause. See *South Atlantic Trucking*, 327 NLRB at 534–535 (misplacement of copies of answer not good cause for failing to file timely answer). Next, even assuming, as the Respondent claims, that its position statement and supporting affidavits denied allegations in the unfair labor practice charges, the filing of a position statement during the precomplaint investigative stage of an unfair labor practice proceeding does not constitute good cause for not filing a timely answer. Cf. *Electra-Cal Contractors*, 339 NLRB 370, 371 (2003) ("[P]osition statements . . . are insufficient to constitute an answer."). Finally, the Respondent's assertion that a hearing is warranted because of the existence of genuine issues of fact is also not sufficient to establish good cause. The Board has stated that "it will not address a respondent's assertion that it has a meritorious defense unless good cause has been shown for the late response." *Patrician Assisted Living Facility*, 339 NLRB 1153, 1154 (2003), citing *Dong-A Daily North America*, *Inc.,* 332 NLRB 15, 16 (2000).

For the foregoing reasons, we find that the Respondent has failed to show good cause why the Board should not find all of the allegations in the complaint to be true. Accordingly, we reject the late answer that the Respondent filed in response to the Motion for Default Judgment. In the absence of good cause being shown for the failure to file a timely answer, we deem the allegations of the complaint to be admitted as true, and we grant the Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Cargill Meat Solutions Corporation (the Employer), a domestic corporation with an office and place of business located in Fort Morgan, Colorado, has been engaged in the manufacturing, processing, and nonretail sale of meat.

During the 12-month period preceding issuance of the complaint, the Employer sold and shipped from its facility in Fort Morgan, Colorado, goods valued in excess of $50,000 directly to points outside the State of Colorado.

We find that Cargill Meat Solutions Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Norberto Ricardo (business agent), Adan Morales (assistant business agent), and Ali Gele Elmi (steward) have held positions that qualify as agents of the Respondent within the meaning of Section 2(13) of the Act.

About early November 2015, at the Employer's facility, Respondent's agents Ricardo, Morales, and Elmi (1) told employees that the Respondent would no longer represent them because they objected to the payment of dues and fees for nonrepresentational activities; (2) threatened employees with preventing them from being promoted because they objected to the payment of dues and fees for nonrepresentational activities; and (3) interrogated employees about why they objected to the payment of dues and fees for nonrepresentational activities.

About December 16, 2015, Morales and Elmi, at the Employer's facility, told employees that the Respondent no longer represented them because they objected to the payment of dues and fees for nonrepresentational activities.

CONCLUSIONS OF LAW

By the conduct described above, the Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall

order the posting of an appropriate notice, attached hereto as "Appendix."[2]

ORDER

The National Labor Relations Board orders that the Respondent, Teamsters Local Union No. 455, Fort Morgan, Colorado, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Telling employees that the Union would no longer represent them because they object to the payment of dues and fees for nonrepresentational activities.

(b) Threatening employees with preventing them from being promoted because they object to the payment of dues and fees for nonrepresentational activities.

(c) Interrogating employees regarding why they object to the payment of dues and fees for nonrepresentational activities.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Fort Morgan, Colorado facility copies of the attached notice marked "Appendix" in English, Spanish, Somali, and such other languages as the Regional Director determines are necessary to fully communicate with employees and members.[3] Copies of the notice, on forms provided by the Regional Director for Region 27, in English, Spanish, Somali, and such other languages as the Regional Director determines are necessary to fully communicate with employees and members, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, deliver to the Regional Director for Region 27 signed copies of the notice in sufficient number for posting by the Employer at its Fort Morgan, Colorado facility, if it wishes, in all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 27 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 4, 2016

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Mark Gaston Pearce, Chairman

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Philip A. Miscimarra, Member

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Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT tell you that the Union will no longer represent you because you object to the payment of dues and fees for nonrepresentational activities.

WE WILL NOT threaten to prevent you from being promoted because you object to the payment of dues and fees for nonrepresentational activities.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[3] In the complaint, the General Counsel requests that the Notice be posted in Spanish, Somali, and any other languages that may be appropriate, and we grant this request.

WE WILL NOT ask you why you object to the payment of dues and fees for nonrepresentational activities.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

TEAMSTERS LOCAL UNION NO. 455

The Board's decision can be found at www.nlrb.gov/case/27–CB–168294 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.